IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL REVISION NO. 3024 OF 1989
DATE OF DECISION: September 27, 2006.

Parties Name

Durga Dass Gupta

...PETITIONER

VERSUS

Tilak Raj and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH

PRESENT: Mr. Amit Jain, Advocate, for the petitioner.

Mr. Satinder Khanna,Advocate, for the respondents

JASBIR SINGH, J. (oral)

Judgment.

This revision petition has been filed by the landlord.

Petitioner filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, for ejectment of respondent No. 1 and 2, from the shop in question, on the grounds that respondent No. 1 was in arrears of rent and that he had sub-let the demised premises to respondent No. 2 without his (petitioner) consent. However, at the time of final arguments, only ground of sub-letting was pressed. The application was dismissed. Petitioner also lost in appeal. Both the Courts below have given a finding of fact that the petitioner has failed to prove sub-letting by respondent No. 1 to respondent No. 2. The Appellate Authority has observed thus:

> "Para 12-A. It may be stated at the outset that Dev Das PW4 is a very unlikely witness, because he is a resident of distant locality has Mandi, Ludhiana, and he is running his business in Deep Nagar. At least, he has got no residence or business in

Kailash Cinema/chowk where the disputed shop is situate. Therefore, more likely than not, he is only a procured witness. It is significant to note that the landlord has not been able to examine even a single witness from this locality, which is a very busy business locality. No reason is explained for this lapse. Therefore, presumption must be drawn against him. On the other hand, Malkiat Singh RW-1 and RW-2 Sukhdev Lal are admittedly doing business in this very locality i.e. Kailash Cinema Chowk, Ludhiana. Therefore, they are natural and genuine witnesses. Their evidence stands the test of scrutiny so their evidence must be given credence.

"13.As noted above, the appellant has heavily relied upon the evidence and the report of Shri Dalip Saggi Advocate, Local Commissioner PW-1. He inspected the disputed shop on 17.8.1984 and found Hira Lal respondent to be doing the business of selling Chhola Bhatura and Samosa in it. He also inspected the other shop No. B-1-473 and found Shri Tilak Raj respondent doing business in it. In the witness box he stated that the respondent No. 2 was in possession of the disputed shop. However, in his cross-examination, he admitted that he had never seen Hira Lal opening and closing the shop in dispute. He is stating Hira Lal to be in possession of the disputed shop only because at the time of inspection he found him present there. But this evidence is too tenuous to hold the sub-letting proved.

14.The evidence of Shri Om Parkash PW-2 , House Tax Clerk, of the Municipal Corporation is not of much help to the

appellant, because the respondent No. 1 has admitted that with the expansion of his business he has taken the shop No. B-1-473 on rent for preparing eatable in it for being sold in the disputed shop. On the contrary the evidence of Shri Om Parkash PW-2 deals heavily against the case of the appellant. This is so because according to him the respondent No. 1 has been in occupation of the shop No. B-1-473 as tenant since 1979. This ejectment petition was filed on 16-8-1984. Therefore, for a period of more than 5 years, the respondent No. 1 had been in occupation of shop No. B-1-473 as a tenant. The landlord resides in the same locality. If it had been the case of sub-letting of the disputed shop, he would not have remained mum and inactive for a period of more than five years. It is an interesting to note that Durga Dass landlord PW3 has admitted that he had been receiving the rent of the disputed shop from Hira Lal on behalf of Shri Tilak Raj. This fact also militates against Hira Lal being sub-tenant, because it is highly improbable that a shrewd and astute business man like Durga Dass appellant well versed in the ways of world would accept rent from a sub-tenant."

This Court feels that the findings given are perfectly justified. It has come on record that even the petitioner had been accepting rent of the demised premises from respondent No. 2 on behalf of respondent No. 1. Further that no witness has been produced from the vicinity of the shop, to say, that respondent No. 1 has put respondent No. 2 in exclusive possession of the said shop. By placing reliance upon the statements of the witnesses, produced by the respondent – tenant, it has rightly been held that

respondent No. 2 being brother, was only helping respondent No. 1 in running the shop. Nothing has been shown, which may necessitate any interference in pure findings of fact. Dismissed.

September 27, 2006 (Jasbir Singh)
DKC Judge